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## Emerson College and the NRLB

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# EMERSON COLLEGE

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September 25, 2003

Dear

As required by the existing contract between the College and the ECCAAUP (Emerson College Chapter of the American Association of University Professors), the parties have begun negotiations on a new collective bargaining agreement. The first formal meeting took place on September 24, 2003, at which time the College presented its perspective on the negotiations. I write to explain that perspective to you.

As most of you know, a landmark 1980 decision of the United States Supreme Court, a case that involved Yeshiva University in New York, defined the circumstances in which full-time faculty members may unionize. The *Yeshiva* rule, simply stated, is that a faculty that participates in the management of the institution cannot bargain with the institution as 'a union under the National Labor Relations Act.

For almost as long as there has been a full-time faculty union here at Emerson, the collective bargaining relationship between the College and the ECCAAUP has operated with recognition of, but out of compliance with, the *Yeshiva* decision. To date, the College and the full-time faculty have chosen to build a relationship that takes no account of *Yeshiva's view* of faculty unions, thus avoiding a costly and divisive legal battle. Our current labor agreement contains many examples of this.

The College's view on the costs of litigation has not changed. Although we know that we could withdraw recognition from the ECCAAUP, and think that we would win the legal fight that would follow, legal fights benefit lawyers and almost no one else.

Nonetheless, the passage of time has convinced the administration and the trustees that the underlying principle of the *Yeshiva* case is right. For the faculty to conduct itself sometimes as management and sometimes as labor compromises its critical role in the College. Most fundamentally, the idea that the faculty retains the right to strike to secure its participation in College management is unreasonable and squarely in conflict with what the U. S. Supreme Court intended. While the current contract, like previous contracts, contains a no-strike clause, the ECCAAUP could call a strike in support of its demands for increased management rights, which many faculty members refer to as

shared governance, should the current contract expire without resolution of this issue at the bargaining table.

Thus, the College is faced with two seemingly conflicting goals -- it wants to avoid a legal fight, but it does not wish to continue the bargaining relationship as it exists.

The College's solution has been to offer the ECCAAUP a choice:

1. Continue the current traditional union vs. management relationship. Emerson will negotiate with the ECCAAUP in good faith, but with the goal of eliminating from the collective bargaining agreement the faculty's right to participate in management of the College.
2. Form a new contractual alliance with the College. The College will negotiate a legally enforceable pact with the faculty that enhances faculty participation in governance, while acknowledging that the faculty organization is not a labor union under the National Labor Relations Act.

Either way, we will deal with the ECCAAUP as representative of the faculty. We hope that these dealings will result in a collaboration that will make the faculty a full partner in our enterprise. If, however, the faculty would prefer to continue its union status, we will negotiate an agreement appropriate for a group of non-managerial employees.

We know that whichever choice the ECCAAUP makes, things will change. We have urged the ECCAAUP, and we urge you, to consider carefully your vision for Emerson. We hope it aligns with ours. Regardless of which road we travel, the College will travel it with respect for its faculty.

S i n c e r e l y ,    4 ' '

Jacqueline Liebergott  
President